

FIRST DIVISION

[G.R. No. 103397, August 28, 1996]

**WILSON CHUA, PETITIONER, VS. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

HERMOSISIMA, JR., J.:

Most crimes are conceived, planned and resolved to be committed in secret. As a consequence, the facts which would sustain a conviction are known only to the *participes criminis* themselves. In view of this, Section 9, Rule 119 of the Revised Rules of Court allows the dismissal of an information as to one of several persons accused of a crime in order that he may be utilized as a witness for the state on condition that he testifies against his co-accused in the commission of the crime. The transaction is in the nature of a contract between the State and the criminal that, in recompense for his exemption or immunity from criminal liability, he shall honestly and fairly make a full disclosure of the crime upon the trial of a confederate, whether the confederate is convicted or not.

This, of course, sets a premium on treachery, but the state maintains that, without the aid of said witnesses, many guilty parties would escape punishment where the facts, which would sustain a conviction, are known only to the conspirators themselves.

Countless crimes would go unpunished as insolent and contumacious criminals would oft-times defy the law with impunity if the rules of criminal procedure were so construed or applied as to seal hermetically the mouths of accomplices, informers and *participes* in general.^[1]

In the light of this perspective, we are called upon to resolve whether or not there is absolute necessity for the testimony of the accused sought to be discharged in this case and whether or not the said accused does not appear to be the most guilty.

This is a petition for review on certiorari of the Decision of the Court of Appeals, dated September 25, 1991, in CA-G.R. SP No. 25348, entitled "People of the Philippines v. Hon. Jesus R. Tabilon x x x and Wilson Chua" and of the Resolution, dated January 7, 1992, denying petitioner's motion for reconsideration.

The antecedent facts are undisputed.

On July 5, 1991, a petition for *certiorari* and *mandamus* was filed by the Office of the Solicitor General in behalf of the People of the Philippines to set aside and declare null and void the Order of the Regional Trial Court, Branch XLII, Dumaguete City, upon the ground that the court *a quo* acted on the Solicitor General's petition with grave abuse of discretion. The order in question denied the state's motion for

the discharge of accused Arcadio Enriquez in Criminal Case No. 9381 as a state witness against his co-accused, Wilson Chua.

A criminal case for Falsification of Private Documents was filed by complainant Tolong Aquaculture Corporation (TAC) against petitioner, Wilson Chua, from whom the complainant, TAC, leased several earth-moving equipment, and Arcadio Enriquez, the project accountant of TAC. The complaint of TAC was that Chua instigated and indorsed Enriquez to make alterations and changes in the Daily Equipment Utilization Reports (DEUR) to enable Chua to charge more than what was legally due him for the use of the equipment. The Inquest Prosecutor dismissed the complaint on December 19, 1989, on the ground of lack of probable cause. On appeal by complainant TAC to the Department of Justice, the prosecutor was ordered to file the corresponding information on the ground that "there exists a prima facie case of Falsification of Private Documents." Subsequently, on July 27, 1990, the Provincial Prosecutor filed the corresponding information with the Regional Trial Court.

On November 26, 1990, the prosecution filed a motion to discharge accused Arcadio Enriquez so that he can be utilized as a state witness.

On December 5, 1990, the court *a quo* issued an Order denying the motion to discharge accused Enriquez as a state witness on two grounds, viz: (1) the prosecution failed to adduce evidence to the effect that all the requirements for the discharge of Enriquez had been complied with; and (2) that accused Enriquez, whose discharge is sought, appears to be in possession of the documents in question and has admitted that he was the one who falsified the same. Thus, the trial court was of the belief that Enriquez was the most guilty.

Dissatisfied, the People of the Philippines elevated the issue of discharge to the Court of Appeals by way of a petition for certiorari and mandamus. On September 15, 1991, the Court of Appeals granted the said petition, the pertinent portion of which, reads:

"x x x The Orders dated December 5, 1991; February 26, 1991 and March 25, 1991 in Criminal Case No. 9381 are hereby declared null and void and set aside; and the respondent court is hereby ordered to discharge the accused Arcadio Enriquez so that he may testify as a state witness in said case so that proceedings in said criminal case may continue."^[2]

Subsequently, a motion for reconsideration filed by petitioner was denied by respondent court in a Resolution, dated January 7, 1992.

Hence, this petition.

Before us, petitioner raises the following issues, viz:

"Respondent Court erred-

1. In ordering the discharge of accused Arcadio Enriquez in the face (sic) of the fact that prosecution has not, up to the present time, presented any of its five witnesses listed in the information.

2. In not upholding the exclusive responsibility of the trial court in the matter of discharging an accused for use as a state witness.

3. In not holding that respondent People's motion to discharge dated November 26, 1990 is fatally inadequate.

4. In holding that accused Arcadio Enriquez does not appear to be the most guilty.

5. In holding that Judge Jesus L. Tabilon abused his discretion."

[3]

Petitioner, in his first assignment of error, claims that respondent Court committed a grave error in ordering the discharge of accused Arcadio Enriquez in spite of the fact that the prosecution has not presented any of its five witnesses listed in the information. He further cites the case of Flores v. Sandiganbayan,^[4] wherein we ruled that if there is an opposition to the discharge of an accused, the trial court must defer or hold in abeyance "its resolution on the motion until after the prosecution has presented all its other evidence."^[5]

Petitioner's contention is bereft of merit.

The case of Leo Flores involves facts different from the case at bar. The information in the Flores case charged Leo Flores and seven other accused of the crime of robbery of a bank. From the records of the preliminary investigation in the Tanodbayan, accused Abelardo Licaros who was sought to be discharged, appeared to be the most guilty and appeared to be the "mastermind" in the commission of the offense. In fact, even the National Bureau of Investigation, which investigated the case, recommended that the accused be charged as a principal. Furthermore, there was other evidence, as shown by the affidavits of the three security guards of the bank, that Modesto Licaros, the remaining accused, was among the bank robbers. When the motion for discharge of Abelardo Licaros was filed by the prosecution, accused Leo Flores opposed on the following grounds, to wit: (a) that there was no absolute necessity for the testimony of Abelardo Licaros for Modesto Licaros' conviction as there were three witnesses who could testify on the direct participation of Modesto Licaros; and (b) that Abelardo Licaros did not appear to be the least guilty. The Sandiganbayan ruled in favor of the motion filed by the prosecutor and issued a resolution ordering the discharge from the information of Abelardo Licaros. On appeal, this Court reversed the Sandiganbayan and upheld the objection of Leo Flores.

The ruling in Flores that "considering the opposition of herein petitioners to the motion for the discharge of Abelardo Licaros, particularly the contention that he is the most guilty and that his testimony is not absolutely necessary, the trial court should have held in abeyance or deferred its resolution on the motion until after the prosecution has presented all its other evidence," should be read in the context of the facts obtaining therein. It was imperative for the Sandiganbayan to hold in abeyance its resolution ordering the discharge of the accused until after the prosecution had presented all its other evidence because the testimonies of the three security guards might establish the participation of Modesto Licaros without

needing the testimony of Abelardo Licaros. Likewise, the evidence might show that Abelardo Licaros was the most guilty.

In the case at bar, the Information charges only two defendants of having committed the offense of falsification of private documents, to wit: petitioner and Arcadio Enriquez. The allegations in the information show that the two had conspired to commit the crime charged. In the Flores case, the crime of bank robbery was done in public and was witnessed by several persons. In this case, the crime of falsification of private documents was done clandestinely. In fact, only two persons -- petitioner and Arcadio Enriquez -- had knowledge of the criminal conspiracy.

Clearly then, only one person can supply the DIRECT evidence required by Section 9, Rule 119 of the Revised Rules on Criminal Procedure and that is Arcadio Enriquez. Hence, the principle that, where a crime is contrived in secret, then the discharge of one of the conspirators is essential so he can testify against the other conspirators, is applicable in this case.^[6]

With regard to the other witnesses listed in the Information who have not yet been called to the witness stand, they would not constitute DIRECT evidence of petitioner's guilt. This is because none of these witnesses was privy to the conspiracy between petitioner and Arcadio Enriquez. Their testimony would merely corroborate the testimony of Enriquez although such corroborative testimony is necessary to fulfill one of the conditions for the discharge of an accused as stated in Section 9, Rule 119 of the Revised Rules of Court, viz: "that the testimony of the discharge accused "can be substantially corroborated in its material points."

Furthermore, the said Rule does not require the prosecution to present all its other evidence before an accused can be discharged. An accused may be discharged at any time before the defendants have entered upon their defense. In fact even the Flores case which was heavily relied upon by petitioner, states that:

"At any rate, the discharge of an accused may be ordered at anytime before they (defendants) have entered upon their defense, that is, at any stage of the proceedings from the filing of the information to the time the defense starts to offer any evidence."

Petitioner also contends that respondent court gravely erred in not upholding the exclusive responsibility of the trial court in the matter of discharging an accused for use as a state witness, citing the case of People v. Tabayoyong,^[7] wherein we held that the discharge of an accused who may turn state witness is expressly left to the sound discretion of the trial court which has the exclusive responsibility to see that the conditions prescribed by the rules exist. While it is true that, as a general rule, the discharge or exclusion of a co-accused from the Information, in order that he may be utilized as a prosecution witness rests upon the sound discretion of the trial court,^[8] this discretion should be exercised by it strictly on the basis of the conditions therein set forth in Rule 119, Section 9 of the Rules on Criminal Procedure. The court's discretion is not absolute and arbitrary. Sound judicial discretion should be exercised with due regard to the proper administration of justice.^[9]

As regards the requisite that there must be absolute necessity for the testimony of the defendant whose discharge is requested, the trial court has to rely on the suggestions and the information presented by the public prosecutor. The reason is obvious. The public prosecutor should know better than the court, and the defense for that matter, as to which of the accused would best qualify to be discharged to become a state witness. He is also supposed to know the evidence in his possession and whom he needs to establish his case.^[10]

Hence, in *People v. Court of Appeals*,^[11] we stated that:

"It is believed that the record justifies the discharge of Ngo Sin to be utilized as a State witness considering the absolute necessity of his testimony for the successful prosecution of the criminal charge if it has to be established that the accused Luciano Tan had planned and financed the theft. All conditions for discharge prescribed by Sec. 9, Rule 119 of the Rules of Court have been met. The Rules do not require absolute certainty in determining those conditions. Perforce, the Judge has to rely in a large part upon the suggestions and the considerations presented by the prosecuting officer.

'A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. In coming to his conclusions as to the necessity for the testimony of the accused whose discharge is requested, as to the availability or non-availability of other direct or corroborative evidence; as to which of the accused is the 'most guilty' one; and the like, the judge must rely in large part upon the suggestions and the information furnished by the prosecuting officer. x x x.'

In this case, the filing by the private prosecutor of the motion to discharge accused Enriquez was done with the conformity of the public prosecutor to apprise the trial court of the role and participation of petitioner in the commission of the crime charged. Furthermore, the trial court was informed that, if accused Enriquez was discharged as a state witness, he would testify:

"1. About the middle of February 1989, he was approached at his office in Tolong, Sta. Catalina, Negros Oriental, by respondent Chua, who engaged him in conversation x x x. Respondent Chua inquired into his work with TAC, his duties and responsibilities, salary, problems and difficulties, and then offered to help him out of his financial difficulties.

2. Respondent Chua induced and persuaded him to alter the DEURs, EORs, and logbooks that were under his control and possession, and to convert the idle hours to utilization hours so that respondent Chua could collect larger payments than he was lawfully entitled for the use of his leased equipment by TAC.